

REVISED  
AGENDA ITEM #15  
June 24, 2008

**Introduction – as Revised**

**MEMORANDUM**

June 23, 2007

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

SUBJECT: Introduction – Zoning Text Amendment 08-14, Transit Mixed-Use (TMX) Zone

Zoning Text Amendment (ZTA) 08-14 is being sponsored by the District Council at the request of the Planning Board. ZTA 08-14 is intended to implement the land use and density recommendations of the Draft Twinbrook Sector Plan. The Draft Plan recommended using the TOMX zone with amendments to that zone on a number of properties. The Planning Board is now recommending replacing the Transit-Oriented Mixed-Use (TOMX) zoning recommendation with the TMX zone. Proposed revisions to the Draft Plan will be available on the Planning Board's web site on Monday. The Council will receive printed copies of the revised Draft Plan on June 20, 2008.

The Transferable Developments Rights (TDR) program is a means of compensating land owners in the Rural Density Transfer (RDT) zone for down-zoning on their property. It still allows one house for every 25 acres to be built if the owner retains a development right. The principle reason for the Planning Board's new recommendation is to create a zone that will use development rights that will terminate building lots in RDT area. The zone's concept was recommended by the Agricultural Policy Working Group as a necessary part of a building lot termination (BLT) program. Establishing the zone is one part of that program. It will also require enabling legislation and regulations. That enabling legislation and regulations should be adopted before this ZTA is approved by the Council.

TMX would be the first zone to implement the BLT program. It establishes the numerics of BLTs in terms of:

- 1) how much of any project requires the purchase of BLT rights – 12.5 percent of optional method of development projects;
- 2) how much each BLT buys in terms of residential or non-residential floor area – 9,000 square feet of residential space and 7,500 square feet of non-residential space; and

- 3) how much a project would contribute to a fund instead of purchasing BLT rights directly – the cash required to rent the BLT space for 1 year.

The Planning Staff's rationale for these numbers is attached to this memorandum. Every number should be the subject of the Council's deliberations.

The zone is structure like the CBD zones; it has both a standard and an optional method of development. It is unique in that it has a variable amount of density for standard development. There is also no specific relationship between the standard method density and the optional method density. All densities below the maximums in the zone would be resolved by the recommendations of the master plan or sector plan.

A public hearing on ZTA 08-14 will be scheduled for July 29, 2008, if the attached resolution is approved.

<u>This Packet Contains</u>	<u>© number</u>
ZTA 08-14	1 - 16
Memorandum from Royce Hansen	17
Memorandum to PHED Committee, June 6, 2008	18 - 21
Memorandum to Dick Tustian, January 18, 2008	22 - 24
Memorandum to Judy Daniel, March 19, 2008	25 - 26
Memorandum to John Carter June 19, 2008	27 - 35
Resolution	36

Zoning Text Amendment No: 08-14  
Concerning: Transit Mixed-Use (TMX) Zone-  
Establishment  
Draft No. & Date: 2 -6/23/08  
Introduced:  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

By: District Council at Request of the Planning Board

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- establish a Transit Mixed-Use (TMX) Zone; and
- establish allowable land uses, development standards, use of buildable transferable development rights, and approval procedures for development under the Transit Mixed-Use Zone.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2	"DEFINITIONS"
Section 59-A-2.1	"Definitions"
DIVISION 59-D-2	"PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT, CBD ZONES, AND RMX ZONES."
Section 59-D-2.0	"Zones enumerated"

And by adding the following Division to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-14 "TRANSIT MIXED-USE ZONES (TMX)"  
Sections 59-C-14.1 through 59-C-14.32

**EXPLANATION:**

**Boldface** indicates a heading or a defined term.

Underlining indicates text that is added to existing laws by the original text amendment.

**[Single boldface brackets]** indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

**[[Double boldface brackets]]** indicate text that is deleted from the text amendment by amendment.

\* \* \* indicates existing law unaffected by the text amendment.

**ORDINANCE**

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. Division 59-C- is amended as follows:**

**Division 59-A-2. Definitions and Interpretation.**

**59-A-2.1. Definitions**

\* \* \*

**Building Lot Termination Easement Program:** A program by which a BLT is purchased or donated in exchange for terminating some or all of the residential building lots. A transferable development right that is eligible for transfer into a designated TDR receiving area that is not a residential building lot on a parcel in the RDT Zone is not eligible for use under the Building Lot Termination Easement Program.

**Buildable lot Termination (BLT) Transferable Development Right:** A transferable development right in the Rural Density Transfer (RDT) Zone that can be used for building one dwelling for each 25 acres in that zone; distinguished from a transferable development right that is in excess of the density allowed in the RDT zone.

\* \* \*

**Transferable Development Right (TDR):** The right to transfer the residential buildable capacity in the Rural Density Transfer (RDT) Zone to other designated zones at the rate of one transferable development right (TDR) for each full five acres owned in the RDT Zone.

**Transfer of development rights:** The conveyance of development rights by deed, easement, or other legal instrument authorized by local law to another parcel of land and the recordation of that conveyance among the land records of Montgomery County, Maryland.

**Sec. 2. Division 59-C- is amended as follows:**

\* \* \*

**DIVISION 59-C-14. TRANSIT MIXED-USE (TMX) ZONE**

**59-C-14.1. Zone permitted.**

The TMX zone is for use in a transit station development area.

**Sec. 59-C-14.2. Transit Mixed-Use (TMX) Zone.**

**59-C-14.21. Description, purpose, and general requirements**

**59-C-14. 21.1. Description.**

The TMX Zone permits moderate through intensive mixed-use development in a Transit Station Development Area. The TMX zone must be shown on a master or sector plan and applied by Sectional Map Amendment. The zone establishes density, uses, and standards, for standard and optional methods of development which may be limited by the recommendations of the applicable master or sector plan.

**59-C-14.2.2. Purpose.**

The TMX zone fosters transit-oriented development by permitting increased density and height consistent with the recommendations of an approved and adopted master plan or sector plan. The purpose of the TMX zone is to:

(a) Implement the land use and density recommendations of approved and adopted master or sector plans for Transit Station Development Areas by:

- (1) facilitating mixed-use development with a compatible network of interconnecting streets, open squares, plazas, defined streetscapes, and civic and community oriented uses ; and
- (2) providing incentives and flexible development standards that foster innovative design and technology.

(b) Encourage land assembly in a compact and efficient form.

(c) Provide a variety of housing opportunities, including affordable housing, near transit stations.

(d) Encourage sustainable and efficient design.

(e) Improve multi-modal access to transit from the communities surrounding transit station development areas.

(f) Provide receiving capacity for buildable lot terminations (BLT).

**59-C-14.22. Location.**

Land classified in the TMX Zone must be located in a Transit Station Development Area.

**59-C-14.23. Methods of development.** Two methods of development are available.

(a) **Standard Method of Development:** The standard method requires compliance with a specific set of development standards and permits a range of uses and a density compatible with these standards. Site plan review is required under section 59-D-3. If residential uses are included in a development, Moderately Priced Dwelling Units must be provided as required under Chapter 25A and workforce housing units must be provided as required under Section 59-A-6.18 and Chapter 25B. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site.

(b) **Optional Method of Development:** The Optional Method of Development allows greater densities and encourages innovative design and building technologies to create pedestrian-oriented and mixed-use development patterns and an environment capable of supporting the greater densities. Approval of the Optional Method of Development is dependent upon providing required public use space,

public amenities and facilities, and participation in the BLT program. Public use space and public facilities and amenities are required to support the additional densities permitted under the Optional Method of Development. If residential uses are included in a development, Moderately Priced Dwelling Units must be provided as required under Chapter 25A and workforce housing units must be provided as required under Section 59-A-6.18 and Chapter 25B. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on site. The procedure for the approval of the Optional Method of Development is under Section 59-D-2. Site plans review is required under Section 59-D-3.

#### **59-C-14.24. Land uses.**

No use is allowed except as indicated in the following table:

**-Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.

**-Special Exception Uses.** Uses designated by the letters "SE" may be authorized as special exceptions under Article 59-G.

	<b><u>TMX</u></b>	
	<b><u>Standard</u></b>	<b><u>Optional</u></b>
<b><u>(a) Residential:</u></b>		
<u>Dwellings.</u>	<u>P</u>	<u>P</u>
<u>Group home, small.</u>	<u>P</u>	<u>P</u>
<u>Group home, large.</u>	<u>P</u>	<u>P</u>
<u>Hotel or motel.</u>	<u>P</u>	<u>P</u>
<u>Housing and related facilities for senior adults or persons with disabilities.</u>	<u>P</u>	<u>P</u>
<u>Life care facility.</u>	<u>P</u>	<u>P</u>
<u>Personal living quarters.</u>	<u>P</u>	<u>P</u>
<b><u>(b) Transportation, communication and utilities:</u></b>		
<u>Parking garages, automobile.</u>	<u>P</u>	<u>P</u>
<u>Public utility buildings, structures, and underground facilities.</u>	<u>P</u>	<u>P</u>
<u>Radio and television broadcasting studio.</u>	<u>P</u>	<u>P</u>
<u>Rooftop mounted antennas and related unmanned equipment building, equipment cabinet or equipment room.</u>	<u>P</u>	<u>P</u>
<u>Taxicab stand, not including storage while not in use.</u>	<u>P</u>	<u>P</u>

	<b>TMX</b>	
	<b>Standard</b>	<b>Optional</b>
<b>(c) Commercial:</b>		
<u>Antique shops, handicrafts or art sales and supplies.</u>	<u>P</u>	<u>P</u>
<u>Automobile sales, retail showroom.</u>	<u>P</u>	<u>P</u>
<u>Book store.</u>	<u>P</u>	<u>P</u>
<u>Convenience food and beverage store, without fuel sales.</u>	<u>P</u>	<u>P</u>
<u>Department stores.</u>		<u>P</u>
<u>Drug store.</u>	<u>P</u>	<u>P</u>
<u>Eating and drinking establishment, excluding drive-in.</u>	<u>P</u>	<u>P</u>
<u>Florist shop.</u>	<u>P</u>	<u>P</u>
<u>Furniture store, carpet, or related furnishing sales or service.</u>	<u>P</u>	<u>P</u>
<u>Gift shop.</u>	<u>P</u>	<u>P</u>
<u>Grocery store.</u>	<u>P</u>	<u>P</u>
<u>Hardware store.</u>	<u>P</u>	<u>P</u>
<u>Office supply store.</u>	<u>P</u>	<u>P</u>
<u>Office, general.</u>	<u>P</u>	<u>P</u>
<u>Office, professional including banks and financial institutions (excluding check cashing stores).</u>	<u>P</u>	<u>P</u>
	<b>Standard</b>	<b>Optional</b>
<u>Offices for companies principally engaged in health services, research and development.</u>	<u>P</u>	<u>P</u>
<u>Newsstand.</u>	<u>P</u>	<u>P</u>
<u>Photographic and art supply store.</u>	<u>P</u>	<u>P</u>
<u>Pet sales and supply store.</u>	<u>P</u>	<u>P</u>
<u>Specialty shop.</u>	<u>P</u>	<u>P</u>
<b>(d) Services:</b>		
<u>Adult foster care homes.</u>	<u>P</u>	<u>P</u>
<u>Ambulance or rescue squad, public supported.</u>	<u>P</u>	<u>P</u>
<u>Animal boarding place.</u>	<u>SE</u>	<u>SE</u>
<u>Art, music and photographic studios.</u>	<u>P</u>	<u>P</u>
<u>Automobile filling station.</u>	<u>SE</u>	<u>SE</u>
<u>Automobile rental services, excluding automobile storage and supplies.</u>	<u>P</u>	<u>P</u>
<u>Barber and beauty shop.</u>	<u>P</u>	<u>P</u>
<u>Charitable and philanthropic institutions.</u>	<u>P</u>	<u>P</u>
<u>Clinic.</u>	<u>P</u>	<u>P</u>
<u>Child daycare facility</u>		
- <u>Family day care.</u>	<u>P</u>	<u>P</u>
- <u>Group day care.</u>	<u>P</u>	<u>P</u>
- <u>Child day care center.</u>	<u>P</u>	<u>P</u>
<u>Daycare facility for not more than 4 senior adults and persons with disabilities.</u>	<u>P</u>	<u>P</u>
<u>Domiciliary care for no more than 16 senior adults.</u>	<u>P</u>	<u>P</u>
<u>Dry cleaning and laundry pick-up station.</u>	<u>P</u>	<u>P</u>
<u>Duplicating services.</u>	<u>P</u>	<u>P</u>
<u>Educational, private institution.</u>	<u>P</u>	<u>P</u>
<u>Home occupation, no impact.</u>	<u>P</u>	<u>P</u>

	<b>TMX</b>	
	<b><u>Standard</u></b>	<b><u>Optional</u></b>
<u>Home occupation, registered.</u>	<u>P</u>	<u>P</u>
<u>Home occupation, major.</u>	<u>SE</u>	<u>SE</u>
<u>Hospice care facility.</u>	<u>P</u>	<u>P</u>
<u>Hospitals, veterinary.</u>	<u>SE</u>	<u>SE</u>
<u>International public organization.</u>	<u>P</u>	<u>P</u>
<u>Place of religious worship.</u>	<u>P</u>	<u>P</u>
<u>Publicly owned or publicly operated uses.</u>	<u>P</u>	<u>P</u>
<u>Shoe repair shop.</u>	<u>P</u>	<u>P</u>
<u>Tailoring or dressmaking shop.</u>	<u>P</u>	<u>P</u>
<u>Universities and colleges teaching and research facilities.</u>	<u>P</u>	<u>P</u>
<b><u>(e) Research and Development and Biotechnology</u></b>	<u>P</u>	<u>P</u>
<u>Laboratories.</u>	<u>P</u>	<u>P</u>
<u>Advanced Technology and Biotechnology.</u>	<u>P</u>	<u>P</u>
<u>Manufacturing, compounding, processing or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, and products resulting from biotechnical and biogenetic research and development.</u>	<u>P</u>	<u>P</u>
<u>Manufacturing and assembly of medical, scientific or technical instruments, devices and equipment.</u>	<u>P</u>	<u>P</u>
<u>Research, development, and related activities.</u>	<u>P</u>	<u>P</u>
<b><u>(f) Cultural, entertainment and recreational:</u></b>		
<u>Auditoriums or convention halls.</u>	<u>P</u>	<u>P</u>
<u>Billiard parlor.</u>	<u>P</u>	<u>P</u>
<u>Bowling alley.</u>	<u>P</u>	<u>P</u>
<u>Health clubs and gyms.</u>	<u>P</u>	<u>P</u>
<u>Libraries and museums.</u>	<u>P</u>	<u>P</u>
<u>Park and playgrounds.</u>	<u>P</u>	<u>P</u>
<u>Private clubs and service organizations.</u>	<u>P</u>	<u>P</u>
<u>Recreational or entertainment establishments, commercial.</u>	<u>P</u>	<u>P</u>
<u>Theater, legitimate.</u>	<u>P</u>	<u>P</u>
<u>Theater, indoor.</u>	<u>P</u>	<u>P</u>

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100 **59-C-14.25. Development standards.**

101 The development standards applicable to the Standard Method and Optional Method  
102 of Development are established in this section. In addition to the requirements  
103 specified in this table, all Optional Method of Development projects must be  
104 consistent with the recommendations of the applicable master plan or sector plan.

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	<b>TMX</b>	
	<b>Standard</b>	<b>Optional</b>
<b>59-C-14.25.1. Minimum net lot area required for any development (in square feet):<sup>1</sup></b>		<u>18,000</u>
<b>59-C-14.25.2. Maximum Building Coverage (percent of net lot area):</b>	<u>75</u>	
<b>59-C-14.25.3. Minimum Public Use Space (percent of net lot area):</b>	<u>10<sup>2</sup></u>	<u>20<sup>3</sup></u>
<b>59-C-14.25.4. Maximum Building Height (in feet):</b>	<u>28</u>	
- If adjoining or directly across the street from land recommended for or developed in a residential zone with a maximum of 15 dwelling units per acre or less (in feet)	<u>35</u>	
<b>59-C-14.25.5. Minimum Setbacks (in feet):</b>		
- From an adjacent TMX Zone <sup>4</sup>	<u>15</u>	
- From an adjacent commercial or industrial zone	<u>20</u>	
- From an adjacent single family residential zone	<u>25</u>	
- From a public right-of-way	<u>10</u>	
<b>59-C-14.25.6. Minimum and Maximum Density of Development<sup>5</sup> (floor area ratio)</b>	<u>.25 - .5<sup>6</sup></u>	<u>3.0<sup>6</sup></u>
12.5% of any density above the maximum of the standard method, as set in the applicable master or sector plan, must be through the purchase of BLTs or through a contribution to the BLT Land trust, as described in Section 59-C-14.30.		

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<sup>1</sup> A smaller lot may be approved if the lot is located adjacent to or confronting another lot either classified in or under application for the same zone, or the combined lots are subject to a single project plan. The minimum area requirement does not prohibit a lot of less than 18,000 square feet for purposes of subdivision or record plat approval.

<sup>2</sup> The required standard method public use space may be reduced to 5% if the Planning Board finds that the reduction is necessary to accommodate the construction of MPDU's, including any bonus units, on-site.

<sup>3</sup> The required optional method public use space may be reduced or eliminated on-site, if an equivalent amount of public use space is provided off-site in the same transit station development area within a reasonable time. A payment instead of all or some of the required public use space may be made if approved under Division 59-D-2.

<sup>4</sup> If the proposed building or the adjacent building has windows or apertures facing the lot line that provides light, access, or ventilation to a habitable space, the setback shall be 15 feet. If the adjacent building does not have windows or apertures, no setback is required.

<sup>5</sup> The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site.

<sup>6</sup> Master or sector plan recommendations may limit the maximum density within these ranges.

**59-C-14.26. Special standards for development under the TMX zone.**

**(a) Public facilities and amenities.** Public facilities and amenities are required for approval of a standard or optional method development project.

**(b) Design Principles.** Site plans submitted for projects in the TMX zone must follow general design principles recommended by the applicable master or sector plan and design guidelines adopted by the Planning Board to implement the applicable master or sector plan. Unless those general principles or design guidelines recommend otherwise, or the Planning Board finds that it is infeasible to follow the design principles due to site constraints or other reasons, any project developed in the TMX zone should:

- (1) use sustainable design principles;
- (2) orient all buildings to streets;
- (3) locate off-street parking to the side, rear, or below grade;
- (4) create a continuous building line to accentuate open space and building entrances; blank building facades must be avoided or minimized;
- (5) provide pedestrian-oriented activity at street level with uses such as storefront retail, residential entrances, office lobbies, and restaurants;
- (6) promote pedestrian safety with safety-oriented environmental design and clearly designated crosswalks and sidewalks;
- (7) include street trees and landscaping on all streets;
- (8) provide continuous, direct and convenient connections to transit stations for pedestrians and bicyclists;
- (9) locate and screen service and loading areas to reduce visibility from any street;

(10) for any building other than a one-family residential building, locate mechanical equipment within buildings or within a mechanical equipment penthouse; however if mechanical equipment is located on a roof or is freestanding, it must be effectively screened;

(11) design street lighting to avoid an adverse impact on surrounding uses, while also providing a sufficient level of illumination for access and security;

(12) provide tree canopy along each street;

(13) provide street furniture such as benches, trash receptacles and planters;

(14) enhance crosswalk areas with accessible curb ramps.

**59-C-14. 27.Off-street parking.** As required under Article 59-E.

**59-C-14.28. Special Standards for Optional Method of Development projects.**

(a) **Density and mix of uses.** In approving the mix of uses and the proposed densities, the Planning Board must consider the size of the parcel, and the relationship of the existing and proposed building or buildings to its surrounding uses. The mix of uses and the proposed densities must substantially conform to the recommendations of an approved and adopted master plan or sector plan.

(b) **Building height and setbacks.** The maximum height permitted for any building and the minimum building setback requirements must be determined during project plan review. In approving height limits or setback requirements, the Planning Board must consider the size of the lot or parcel, the relationship of existing and proposed buildings to surrounding uses, the need to preserve light and air for the residents of the

development and residents of surrounding properties, and any other factors relevant to the height or setback of the building. The proposed building height and the proposed setbacks must substantially conform to the recommendations of an approved and adopted master plan or sector plan.

**(c) Transfer of public use space, density, and mix of uses.** The Planning Board may approve the transfer of density, the mix of uses, and the public use space, between parcels classified in the TMX zone in the same transit station development area. The transfer of density must not result in an increase of density or height on parcels that abut or confront properties recommended for one-family residential development by an approved and adopted master plan or sector plan. Any transfer of public use space, density, or mix of uses must not result in a change in the total combined amount of public use space, density, or mix of uses otherwise attributable to the relevant parcels, and such transfers must be approved as part of a combined project plan for all relevant parcels under Section 59-D-2 and Section 59-D-3.

**59-C-14.29. Existing buildings and uses.**

Any lawful structure, building or established use that existed before the applicable Section Map Amendment adoption date, is a conforming structure or use and may be continued, structurally altered, repaired, renovated, or enlarged up to 10 percent of the gross building floor area or 7,500 square feet, whichever is less. However, any enlargement of the building that is more than 10 percent of the gross floor area or 7,500 square feet or construction of a new building must comply with the standards of the TMX Zone.

**59-C-14.30. Special regulations for use of a Buildable Lot Termination (BLT) Development Right.**

- 187 (a) 12.5 percent of any floor area above the maximum allowed under the  
188 standard method of development, as recommended in the applicable  
189 master or sector plan, must be supported through the purchase by the  
190 applicant of a BLT or through a contribution to the Agricultural Land  
191 Preservation Fund under Chapter 2B for purchase of an easement on real  
192 property to preserve agricultural land in the County.
- 193 (b) One BLT must be required for 9,000 square feet of residential space,  
194 and 7,500 square feet of non-residential space for the amount of floor  
195 area supported through the purchase of BLTs .
- 196 (c) A BLT must be created, transferred and extinguished only by means of a  
197 recordable easement in perpetuity approved by the Planning Board,  
198 including appropriate releases. The BLT easement must extinguish the  
199 right to construct a dwelling unit on each 25 acres in the RDT zone  
200 subject to the easement.
- 201 (d) If the applicant for optional method of development under the TMX  
202 zone cannot purchase an easement, or if the amount of density to be  
203 attributed to BLT easement is a fraction of the applicable floor area  
204 equivalent, the Planning Board must require the applicant to pay the  
205 Agricultural Land Preservation Fund an amount equal to the average  
206 annual market rent for class A office space or multi-family residential  
207 space in the applicable master or sector plan area for the amount of floor  
208 area required to be supported by buildable rights termination.

209 **59-C-14.31. Development approval procedures under the standard and**  
210 **optional method of development.**

- 211 (a) In the standard method, APF validity will be determined at  
212 subdivision or at site plan if subdivision is not required.

(b) In the optional method, APF validity will be determined at the time of project plan if subdivision is not required.

(c) Under both standard and optional method, if subdivision is not required, the applicant must record a plat under Sec. 50-35A.

(d) The Planning Board must find that the proposed development:

(1) satisfies the provisions of this chapter;

(2) substantially conforms to any numeric limits recommended in the applicable master or sector plan concerning floor area ratio, dwelling units per acre, building heights, and setbacks; and is in substantial conformance with the recommendations of the applicable master or sector plan; and

(3) achieves a desirable development compatible with site conditions, surrounding existing development, and anticipated future development.

**59-C-14.32. Development standards applicable to the standard and optional method of development.**

In making the determination as to the final density, the Planning Board must consider whether the proposal:

(a) substantially conforms to any numeric limits recommended in the applicable master or sector plan concerning floor area ratio, dwelling units per acre, building heights, and setbacks; and substantially conforms with the recommendations in the applicable approved master or sector plan;

(b) preserves environmentally sensitive and priority forest areas, and mitigates unavoidable impacts on the natural environment;

(c) facilitates good transit serviceability and creates a desirable and safe pedestrian environment; and

(d) is compatible with surrounding land uses and promotes harmonious development of the planning area.

\* \* \*

**Sec. 3. Article 59-D is amended as follows:**

**ARTICLE 59-D. ZONING DISTRICTS—APPROVAL  
PROCEDURES.**

**INTRODUCTION**

\* \* \*

The following table is provided for the convenience of the public, citing the appropriate sections of article 59-C and indicating the types of plans required in each zone. In event of conflict between this table and the provisions of article 59-C, the latter must govern.

**Plan Approvals Required**

<u>Zone</u>	<u>Section Number</u>	<u>Development Plan (Division 59-D-1)</u>	<u>Project Plan Optional Method (Division 59-D-2)</u>	<u>Site Plan (Division 59-D-3)</u>	<u>Diagrammatic Plan (Division 59-D-4)</u>
* * *					
<u>Standard Method</u>					
* * *					
<u>TMX</u>				X	
<u>Optional Method</u>					
* * *					
<u>TMX</u>			X	X	

\* \* \*

**Sec. 3. Division 59-D-2 is amended as follows:**

\* \* \*

**Division 59-D-2. Project plan for optional method of development in the CBD, TOMX, TMX, AND RMX ZONES.**

**Sec. 59-D-2.0. Zones enumerated.**

The Planning Board is authorized to approve development under the optional method of development procedures described in Section 59-C-6.2 of the CBD zones, Section 59-C-10 of the RMX Zones, Section 59-C-13 of the TOMX Zones, Section 59-C-14 of the TMX zone, and the approval procedure set forth in this Division, for the following zones:

\* \* \*

[TOMX-1-Transit Oriented Mixed-Use, 1.0]

\* \* \*

[TOMX-1/TDR-Transit Oriented Mixed-Use/Transferable Development Rights, 1.0]

\* \* \*

TMX- Transit Mixed-Use

\* \* \*

**Sec. 4. Effective date.** This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

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Linda M. Lauer

Clerk of the Council



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MEMORANDUM**

**TO:** Montgomery County District Council  
**FROM:** Royce Hanson, Chair, Montgomery County Planning Board  
**DATE:** June 20, 2008  
**RE:** Transit Mixed-Use Zone (Transmit for Introduction).

It was agreed at the Planning Board's June 19, 2008 meeting to transmit the attached Transit Mixed-Use (TMX) Zone to the District Council for introduction. The new zone would eventually replace the TOMX zones as the primary zoning tools for development in the Twinbrook Sector Plan, the Germantown Master Plan, and other plans in designated transit areas. After the TMX zone is adopted, a master plan amendment and sectional map amendment will be needed for the Shady Grove Master Plan to replace the TOMX zone with the TMX zone.

An important element of the TMX zone is its use as a receiving area for buildable lot termination (BLT) development rights. Under the TMX zone, 12.5 percent of any density above the maximum of the standard method of development, as set in the applicable master or sector plan, must be through the purchase of BLTs or through a contribution to the BLT Land Trust. One BLT will be the equivalent of 9,000 square feet of residential space, or 7,500 square feet of non-residential space. Supporting legislation and an Executive Regulation will be needed for the BLT program to be fully effective. The standard method density under the TMX zone ranges from 0.25 to 0.50. The optional method density is 3.0 with no minimum. The maximum density within these limits will be established in the applicable master or sector plan. The TMX zone also provides the same amenity fund provisions applicable in the CBD and RMX zones. Site plans submitted for projects in the TMX zone must address general design principles recommended by the applicable master or sector plan and design guidelines adopted by the Board.

The Planning Board looks forward to working with the District Council and its staff on this new zone.

A handwritten signature in black ink, appearing to read "Royce Hanson".  
Royce Hanson

Chairman, Montgomery County Planning Board

(17)



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

June 6, 2008

**MEMORANDUM**

**TO:** Planning, Housing and Economic Development Committee of the  
Montgomery County Council

**VIA:** Karl Moritz, Chief, Research & Technology Division  
Roselle George, Research Manager, Research & Technology Center

**FROM:** Pamela Dunn, Planner Coordinator, Research & Technology Center  
  
Judy Daniel, Team Leader, Bethesda Chevy Chase/North Bethesda,  
Community-Based Planning Division

**SUBJECT:** Components of the Building Lot Termination Program

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**Components of the Building Lot Termination (BLT) Program:**

• **Conversion of TDRs from dwelling unit allowance to square feet**

Instituting the BLT program requires establishing a formula for conversion of residential units into square footage and equivalencies between residential square feet and non-residential square feet.

A briefing paper presented to the Planning Board in January and referenced again in March proposes the following conversion of TDRs to a square foot equivalent. (The supporting analysis, contained in two memos prepared by Research staff, is attached.)

The study yields a factor of:

1 TDR = 1,800 square feet residential space  
1 TDR = 1,500 square feet office floor space

#### • Conversion of TDRs to BLTs

The conversion of TDRs to BLTs is based on the relative value of a TDR to the value of a BLT within the same timeframe. TDR values are determined by market transactions. Data provided by the Department of Economic Development indicate the market value of TDRs ranged from \$35,000 in 2005 to \$42,000 in 2006.

The value of a BLT is equivalent to the market value of a vacant 25-acre lot in the Agricultural Reserve minus the agricultural value of the parcel (the retained value of the land). Land sale data for 2005-2006 suggests an average vacant lot value of approximately \$400,000. Farmland prices averaged approximately \$8,400 per acre during this period. Thus, the value of the BLT easement is approximately \$200,000. Under current recessionary trends, land and TDR prices have declined. But, the relative value established at a point in time remains. The relative value of a TDR to a BLT is then \$38,500 to \$200,000 or 5 TDRs to 1 BLT.

Given the BLT system proposed here, five times the value of a TDR as the equivalent amount necessary to sever the building lot from the agricultural property, then the square foot conversion for a BLT is as follows:

1 BLT = 5 TDRs = 9,000 square feet of residential space

1 BLT = 5 TDRs = 7,500 square feet of non-residential space

#### • Density Subject to BLT

The BLT easement program proposed as part of the Twinbrook Sector Plan would require 12.5 percent of all optional method development to purchase a BLT easement based on 7,500 square feet of non-residential space per BLT or 9,000 square feet of residential space per BLT.

The recommendation of a 12.5percent requirement follows the MPDU requirement rationale. The program requirement must balance the desire to increase density near transit stations as it is clearly related to prevention of sprawling, low-density growth in the Agricultural Reserve while ensuring that the payment for the density bonus does not preclude the desire to develop.

Every development project is very different and some projects have a greater ability to absorb their public obligations than others. But our analysis indicates that this requirement is reasonable. Moreover, our approach to spread the BLT/TDR obligation among more development projects reduces the financial burden of any one project. Finally, the payment-in-lieu provision provides the market with some additional certainty in cases where BLTs are not available.

- **Payments in Lieu of Purchasing BLTs**

In the event that sufficient BLTs are not available in the market, or the calculation of the BLT payment results in a partial BLT, the proposed BLT easement program will allow for payments made in lieu of purchasing BLTs, applied to whole or partial BLTs.

The payment in lieu, for non-residential space, will be indexed to the 12-month average rental rate for Class A office space in the location of the project. The payment in lieu, for residential space, will be indexed to the average rental rate for mid and high-rise rental units in the location of the project.

- **Prerequisites to the Implementation of the BLT program:**

**Public Outreach**

On June 16, 2008, planning department staff will host a meeting of stakeholders to explain the recommended BLT program, facilitate discussion and obtain feedback.

**Enabling Legislation for Montgomery County Easement Programs**

In December 2007, Bill 39-07 was introduced to the County Council and a public hearing was held on January 15, 2008. The County Council's adoption of this bill (or a version thereof) would establish the enabling legislation required for the BLT program.

**Executive Regulations**

Executive regulations for the BLT program would define the program parameters and establish the above outlined BLT program components.

**Zoning Text Amendment**

The zoning text amendment for the TMX zone will corroborate BLT program requirements established in the executive regulations.

**Trust Fund Action**

Payment in lieu of purchase will be deposited into a trust fund. The trust fund will be the source of revenue for the purchase of BLT easements. The creation of the trust and the administration of the funds need to be established.



THE MARYLAND-NATIONAL CAPITAL PARK &amp; PLANNING COMMISSION

January 18, 2008

**Memorandum**

To: Dick Tustian

From: Jacob Sesker, Research & Technology Center, 301-650-5619

Re: TDR Residential to Commercial Conversion

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**Finding**

Commercial space is roughly 20% more valuable than office space. Approximately 1,500 square feet of commercial space has the same value as 1,800 square feet of residential space.

**Introduction**

The TDR program in Montgomery County has been in place for a quarter of a century. Until now the program has served to provide purchasers of TDRs with additional residential density (measured in dwelling units). The Research & Technology Center was asked to advise the Planning Board regarding how to set a conversion rate in order to allow these instruments to be used to buy additional commercial or mixed-use square footage.

This was not, *per se*, an inquiry into the inherent value to developers of additional commercial density. The value of additional commercial density to developers is very project-specific, and depends upon the difference between the income generated by the extra density and the cost of building that extra density.<sup>1</sup> Instead, this inquiry involved simply a comparison between the sales value of residential space and the capitalized value of commercial space. *In essence the question herein addressed is: If a developer is willing to use a TDR now to buy a certain increment of residential density, what would be a comparable or competitive increment of commercial density?*

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<sup>1</sup> Neither the income nor the cost lends itself to tidy generalization. While the financial feasibility of using TDRs at a particular price can be calculated for individual projects using *pro forma* analysis of that project's costs and revenues, it is not practical to attempt to calculate that feasibility for all projects across Montgomery County.

## Assumptions

The following assumptions were made in this analysis:

- In converting dwelling units to square feet, the analysis assumed that a townhome represents the most representative "base" dwelling type. This assumption is reasonable based upon the nature of current and future receiving areas, and the fact that townhomes represent a "midpoint" between single-family and multi-family development.
- While comparisons of the value of existing office space and existing residential space are informative, the most relevant comparisons are between the values of new office space and new residential space.
- "Commercial" for calculation purposes will be limited to office; however, it is envisioned that TDRs could also be used for retail density.
- "Office" is assumed to be Class A office space.

## Analysis

### *Step One: Convert Townhouse Dwelling Unit to Townhouse Square Footage*

According to the Census Update Survey, the median size of a townhome built in Montgomery County between 2000 and 2005 is 1,816 square feet.<sup>2</sup> Analysis of parcel file data shows a similar result, with a median size of new townhomes of 1,792 square feet. Given these numbers, it is assumed that one townhouse equals 1,800 square feet.

### *Step Two: Calculate the Value (Per Square Foot) of a New Townhouse*

In 2006, the median price of new townhouses in Montgomery County was \$ 518,510. Assuming a size of 1,816 square feet, the median price was \$285 per square foot.

### *Step Three: Calculate the Value (Per Square Foot) of New Class "A" Office Space*

According to the GVA Advantis (Q2 07) office market report, the average rent for Class A office space is \$30.70. This average rent includes all Class A office space, no matter the age. It is assumed that the countywide average value of new Class A office space would be closer to \$35 per square foot.<sup>3</sup> Accounting for operating expenses of 30% and the countywide vacancy rate of 10% and then capitalized<sup>4</sup> at 5% the value is \$350 (capitalized at 6.50% it would be \$323).<sup>5</sup>

<sup>2</sup> As a reference point, the median size of SFD homes built between 2000 and 2005 is 3,348 square feet.

<sup>3</sup> Because there are relatively few new Class "A" buildings in the County, it is possible only to estimate the countywide average Class "A" rents for new office space. New Class A office countywide would probably range from \$25 to \$50, with trophy level rents of \$45-\$50 attainable in downtown Bethesda.

<sup>4</sup> In real estate, "capitalization" refers to the process of converting a net income stream from rentals to a sale value.

<sup>5</sup> "Korpacz Real Estate Investor Survey, Q3 07," Price Waterhouse Coopers. Cap rates of 6% and 6.5% are based upon the results of investor survey responses for the Q3 07 Suburban Maryland office market.

*Step Four: Establish a Ratio of the Values (Per Sq. Ft.) of Townhouses and Class "A" Office Space*

The value of new Class "A" office space, as established in Step Three (above) is roughly \$323 to \$350. The value of a new townhome, as established in Step Two (above), is \$285 per square foot. New Class "A" office space is roughly 13% to 23% more valuable than new townhouse residential space. Put differently, new townhouse space is 12% to 19% less valuable than new Class "A" office space.<sup>6</sup>

*Step Five: Apply the Ratio of Values (Established in Step Four) to the Townhouse Square Footage (Established in Step One)*

New townhouse space is 12% to 19% less valuable than Class "A" office space. In order to determine how much office space has the same value as 1,800 square feet of new townhouse, the 1,800 figure is multiplied by 81% and 88%—doing so establishes a range of 1,458 square feet to 1,584 square feet. Based on this methodology, approximately 1,500 square feet of new Class "A" office space has the same value as 1,800 square feet of new townhouse space.

**Implications**

The Planning Board has yet to determine how the new system will work. Examples of possible variations include the following:

- 1 TDR=1 dwelling unit or 1,500 square feet of commercial
- 1 TDR=1,800 square feet of residential or 1,500 square feet of commercial
- 1 TDR=1,800 square feet of commercial or residential

In spite of these and other unknowns, the following conclusions are reasonable:

- Commercial space is roughly 20% more valuable than residential space
- A townhouse dwelling unit is roughly equivalent in value to 1,500 square feet of commercial space

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<sup>6</sup> For example, \$350 is 23% more than \$285, whereas \$285 is 19% less than \$350.

## ATTACHMENT 1



THE MARYLAND-NATIONAL CAPITAL PARK & PLANNING COMMISSION

March 19, 2008

### Memorandum

To: Judy Daniel

From: Jacob Sesker, Research & Technology Center, 301-650-5619

Re: TDR Residential to Commercial Conversion

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#### Purpose

The purpose of this memorandum is to clarify the rationale behind the methodology used in the TDR Residential-to-Commercial Conversion formula.

#### Introduction

The Research & Technology Center was asked to advise the Planning Board regarding how to set a conversion rate in order to allow these instruments to be used to buy additional commercial or mixed-use square footage. A memorandum summarizing the findings and analysis was submitted to Richard Tustian on January 18, 2008 and was presented to the Planning Board on January 24, 2008. That memorandum clearly set forth the calculation methodology, but only summarily addressed the underlying rationale. The purpose of this memorandum is to clarify that rationale.

#### Rationale

The conversion formula contained in the January 18<sup>th</sup> memorandum is based on the assumption that commercial receiving areas will be competing with residential receiving areas. The conversion proceeds down the path from a residential unit to residential square feet and then from residential square feet to commercial square feet.

In future TDR receiving areas this agency will probably not be zoning for residential density below the townhouse level. As such, the lion's share of residential units would be either townhouse units or multi-family units. Of those two categories, townhouse is typically the more valuable unit. This is true for a

variety of reasons, including that the units are larger and that there is no need for structured parking (as would be the case in dense multi-family developments). Because the townhouse is the most valuable residential unit that we will likely see in our future receiving areas, it was chosen to serve as the baseline for this analysis.

In converting a townhouse to commercial square footage we opted to equate "commercial" with "Class A Office". As was discussed with the Planning Board on January 24th, this decision was made because the future receiving areas are unlikely to be planned or zoned for surface-parked, stand-alone retail. Instead, these areas are likely to be a mix of housing and office above ground-floor retail. Thus, the office space is more likely to require additional density than retail space.

Finally, it is unlikely that any developer would buy additional density at a metro station to construct Class B office space, medical office space, or similar low-value products. While such space is built (not all of it ages and depreciates from Class A to Class B), it is hard to imagine such low-value uses being built near transit in Montgomery County—the land costs are simply too high.

#### **Conclusion**

The rationale outlined above was used as the justification for the assumptions used in the TDR residential-to-commercial conversion formula, which was outlined in detail in the attached memorandum (January 18, 2008).



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

June 19, 2008

**MEMORANDUM**

TO: John Carter

CC: Royce Hanson; Rollin Stanley; Glenn Kreger; Kristin O'Connor; Pam Dunn

VIA: Karl Moritz (Chief, Research & Technology) *KM*  
Roselle George (Research Manager) *RG*

FROM: Jacob Sesker, Planner Coordinator (Research) *JBS*

SUBJECT: Preliminary Pro Forma Analysis- TMX in Twinbrook

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**SUMMARY OF FINDINGS**

- 1) The TMX-BLT regime proposed is less burdensome than the TOMX-TDR regime previously proposed when applied to development above FAR 1.5.
- 2) The TDR-BLT regime proposed is more burdensome than the TOMX-TDR regime previously proposed when applied to development at or below FAR 1.5.
- 3) Montgomery County's inclusionary zoning programs impose significant burdens on development.
- 4) Montgomery County's development taxes, mitigation costs, and optional method amenities impose significant burdens on development.
- 5) The TMX-BLT regime proposed is a less significant burden on development than (a) the inclusionary zoning programs or (b) the development taxes, mitigation costs, and optional method amenities.

**BACKGROUND**

At the last public hearing, Councilmember Floreen requested analysis of the financial feasibility of requiring developers to purchase BLTs for all density above the standard method base. Staff has requested pro forma analyses from a number of affected developers in order to help address this issue.

To date, only one developer (JBG) has submitted a pro forma expressly for the purpose of analyzing the feasibility of the BLT requirement in light of other requirements imposed by the County on new development. The subject property is located in a proposed TMX zone with

maximum FAR (Floor-Area Ratio) 2.0. The land area of the site is 118,929 square feet, and the proposed density on the site is 237,858 square feet. The development program tested for the subject property is 217,858 square feet of residential above 20,000 square feet of retail.

Staff makes the following statements at the outset:

- Any development pro forma contains proprietary information. Staff has made every effort to minimize the amount of proprietary information that is contained in this memorandum. As such, the memorandum may appear "short on details." That fact does not indicate that the analysis was incomplete.
- The analysis herein contained is based upon the assumptions included in the developer's pro forma, which were then used as inputs into Staff's own pro forma. Staff believes that the assumptions are, on balance, not unreasonable. Staff did not attempt to make assumptions on behalf of the developer.
- Staff does not draw conclusions about the actual feasibility of the various alternative scenarios under current or future market conditions. The analysis herein contained is intended to show only the relative feasibility of the alternative scenarios.
- The scenarios and alternatives herein analyzed are compared on the basis of "yield on cost," which is a measure comparing the income stream generated by the project to the cost of developing the project. In essence, the yield on cost is the amount of net income generated annually per dollar of development cost. There are many measures of financial return that could be utilized—this is only one of them.

## ANALYSIS

Four regulatory cost scenarios were analyzed. In each scenario, four mixes of residential units were analyzed. The purpose of the alternative mixes was to demonstrate the independent effect of inclusionary zoning requirements. The purpose of the four regulatory cost scenarios was:

1. To show the total cost of all Montgomery County regulatory impositions,
2. The cost of development taxes and optional method amenities, and
3. To demonstrate the added impact of the TOMX with TDR regime previously approved by the Planning Board on relative feasibility, and
4. To demonstrate the added impact of the current proposal for a TMX zone with BLTs on relative feasibility.

### *Step One: Establish Unit Mix Alternatives*

For each scenario, four unit mixes were analyzed. The purpose of this step was to allow us to separate out the costs imposed by affordable housing requirements. Four unit mix alternatives were established.

Table 1: Unit Mix Alternatives

	1-All Market	2-MPDU	3-MPDU & Workforce	4-Workforce w/ Constant Unit Total
Total Residential Units	206	206	224	206
Market Rate Units	206	180	180	165
MPDU	0	26	26	23
Workforce Units	0	0	18	17

- Alternative 1 includes all units as market rate units.
- Alternative 2 includes 12.5% MPDU with no Workforce Housing.
- Alternative 3 includes both the MPDU and Workforce Housing requirements. In Alternative 3, the project achieves the added density contemplated by the Workforce Housing legislation.
- Alternative 4 includes both the MPDU and Workforce Housing requirements. Alternative 4 is distinguished from Alternative 3 in that the density bonus associated with Workforce Housing is not achieved. Developers state that it is sometimes not possible for them to increase the total number of units in a development in order to accommodate the Workforce Housing requirement (e.g. because height restrictions in the zone or master plan prevents them from achieving that level of density). As such, it may be that the total number of units will remain constant, with the Workforce Housing effecting a proportional reduction in market rate units and MPDU.

*Step Two: Establish a Base Scenario*

The first step in the analysis was to analyze the capital costs and net operating income of the project, excluding the developer's assumed costs of Montgomery County regulatory impositions. The developer estimates a cost of \$22.13 per FAR foot before including affordable housing and TDR/BLT requirements. That cost of \$22.13 was then removed from the developer's total hard and soft costs. It should be noted that some of these costs may in fact reduce the cost of the land, rather than add to the cost of development. Staff did not attempt to determine to what extent these regulatory impositions affected the sale price of the land; rather, Staff assumed that these were development costs.

Table 2: Cost of Taxes, Mitigation and Amenities

	Total Cost	Cost Per FAR Foot
Public Open Space & Amenities	\$1,189,290	\$5.00
School Impact Tax 105%	\$566,737	\$2.38
School Impact Tax Basic	\$2,005,204	\$8.43
Transportation Impact Tax (Residential)	\$498,520	\$2.10
Transportation Impact Tax (Commercial)	\$86,800	\$0.36
TMD Commercial Tax	\$28,571	\$0.12
Estimated Transportation Mitigation	\$750,000	\$3.15
Recordation Tax	\$139,500	\$0.59
<b>Total</b>	<b>\$5,264,622</b>	<b>\$22.13</b>

Table 3: Yield on Costs\*, Base Scenario

	1-All Market	2-MPDU	3-MPDU & Workforce	4-Workforce Constant Unit Total
Yield On Hard & Soft Costs	6.489%	6.020%	5.683%	5.792%
Yield On Hard & Soft Costs & Land	5.491%	5.094%	4.874%	4.902%

\* Net Operating Income divided by Costs

The developer's returns in this scenario are higher than for any other scenario analyzed. Using the developer's assumptions, this yield of 6.489% on hard and soft costs represents the true income-generating potential of this development under current market conditions. All other alternatives and scenarios demonstrate the degree to which regulatory burdens affect that yield.

The Base Scenario, as with all others, contains the four "unit mix alternatives" described in Step One. Because all other regulatory impositions have been extracted, the Base Scenario is a clear example of the financial impact of the inclusionary zoning requirements. In the two scenarios that contain Workforce Housing, yields are substantially lower than the yields on the two scenarios that do not.

*Step 3: Re-Insert Development Taxes, Mitigation, and Optional Method Amenities*

The impact of adding back the \$22.13 per square foot that was removed in Step Two was a substantial decline in yield on cost.

Table 4: Yield on Costs\*, Optional Method Scenario with Development Taxes, Mitigation Costs, and Amenities

	1-All Market	2-MPDU	3-MPDU & Workforce	4-Workforce Constant Unit Total
Yield On Hard & Soft Costs	6.028%	5.592%	5.277%	5.381%
Yield On Hard & Soft Costs & Land	5.157%	4.784%	4.573%	4.604%

\* Net Operating Income divided by Costs

This cost significantly reduces the yields for each of the unit mix alternatives. For example, the yield on hard and soft costs for Alternative 3 fell from 5.683% to 5.277%. When examining the feasibility of redeveloping an income-producing property, a decline of this magnitude can be quite significant.

*Step 4: Analyze the TOMX/TDR Concept*

The next step was to analyze the project assuming that the TOMX-2/TDR concept that was included with the Twinbrook Sector Plan that was approved by the Planning Board and transmitted to the Council earlier this spring. Properties that were zoned TOMX-2/TDR would have been required to purchase all of the density from 1.5 to 2.0 using TDRs. That increment of density could only be for residential use. It was contemplated that TDRs would be converted into square feet rather than into housing units (in this case, 1800 square feet of residential per TDR). See calculations in Table 5 (below).

Table 5: TDR under TOMX2/TDR

Total FAR Feet at 2.0	237858
Total FAR Feet at 1.5	178394
FAR Feet Requiring TDRs	59465
TDRs at 1800 square feet	33
Cost per TDR	\$40,000
Total Cost of TDRs	\$1,321,433

Table 6: Yield on Costs\*, TOMX Scenario FAR 1.5 to 2.0 with TDR

	1-All Market	2-MPDU	3-MPDU & Workforce	4- Workforce Constant Unit Total
Yield On Hard & Soft Costs & TDRs	5.922%	5.494%	5.193%	5.286%
Yield On Hard & Soft Costs & TDRs & Land	5.080%	4.712%	4.509%	4.534%

\*Net Operating Income divided by Costs

The added burden of the TDR requirement reduced yields by about 0.1% for each of the four unit mix alternatives. The TDR requirement for Alternative 3 reduces the yield by 0.084% (from 5.277% to 5.193%). Many redevelopment projects in locations like Montgomery County are already very close to infeasibility, due to factors such as high land prices, high opportunity costs associated with existing income streams, and high infrastructure and site costs. Given the razor-thin margin of feasibility in many redevelopment projects, 0.1% can be enough to move a project from feasible to infeasible.

It is important to note that many properties may have chosen to build only to an FAR of 1.5. This would not have required the purchase of any TDRs.

Table 7: Yield on Costs\*, TOMX Scenario to FAR 1.5 with no TDR

	1-All Market	2-MPDU	3-MPDU & Workforce	4- Workforce Constant Unit Total
Yield On Hard & Soft Costs	6.166%	5.743%	5.614%	5.552%
Yield On Hard & Soft Costs & Land	5.038%	4.693%	4.632%	4.536%

\*Net Operating Income divided by Costs

Based upon these yields, developers would likely choose to not buy TDRs in order to build to the FAR of 2.0, but rather would choose to build only to an FAR of 1.5.

#### Step Five: Analyze the TMX/BLT Concept

The current proposal is to create a TMX zone. Development within the TMX zone would be required to purchase BLTs for 12.5% of all density above the standard method. In this case, that would mean purchasing BLTs for 12.5% of all density between FAR 0.5 and 2.0. The BLT instrument itself would be more expensive than a traditional TDR. Assume, *arguendo*, the following: (1) that the cost of a BLT in Twinbrook is \$221,500, (2) that a BLT would be worth 7500 square feet of commercial space and 9000 square feet of residential space, and (3) that the

number of BLTs a project required would be based on the overall ratio of uses in the project<sup>2</sup>. See calculations in Table 8 (below).

Table 8: BLT under TMX

Total FAR Feet at 2.0	237858
Total FAR Feet at 0.5	59465
FAR Feet Above Standard Method	178394
12.5% of FAR Feet Above Standard Method	22299
Percentage of Project Residential	91.6%
Percentage of Project Commercial	8.4%
Cost per BLT	\$221,250
Total BLTs Required	2.51
Total Cost of BLTs	\$555,980

Based on these preliminary assumptions, the cost of the BLT program is substantially less than the cost of TDRs under the TOMX2/TDR proposal. It is, however, more expensive than spending \$0 on TDR by building to an FAR of 1.5 without TDRs under the TOMX2/TDR zone.

Table 9: Yield on Costs\*, TMX with BLT

	1-All Market	2-MPDU	3-MPDU & Workforce	4-Workforce Constant Unit Total
Yield On Hard & Soft Costs & BLTs	5.983%	5.550%	5.241%	5.341%
Yield On Hard & Soft Costs & BLTs & Land	5.125%	4.754%	4.546%	4.574%

\*Net Operating Income divided by Costs

The yields are higher under the current TMX with BLT scenario than under the earlier TOMX/TDR scenario. For example, the yield on Alternative 3 is 5.241% in the TMX with BLT scenario, compared to a yield of 5.193% in the TOMX with TDR scenario. However, the yield is lower in the TMX with BLT scenario than on a project building to FAR 1.5 under the previously proposed TOMX with TDR. For example, the yields on Alternative 3 are 5.241% in the TMX with BLT scenario, but are 5.614% at FAR 1.5 in the TOMX with TDR scenario.

<sup>2</sup> The price and the square footage conversion method are assumed here based upon recent Staff memoranda on this topic.

## CONCLUSION

Staff draws no conclusions from this analysis as to whether the TMX with BLT requirement will be the “straw that breaks the camel’s back.” At FAR 2.0, the TMX with BLT is less burdensome than the TOMX2 with TDR. However, under the TOMX-2 with TDR proposal, developers were not required to purchase TDR; therefore, developers could have received higher yield under TOMX with TDR by building to FAR 1.5 (which would not require TDR).

Table 10: Comparison Table-Yield on Cost, by Scenario, Selected Residential Mix Alternatives

Scenario	Residential Mix Alternative			
	1-All Market	2-MPDU	3-MPDU & Workforce	4-Workforce Constant Unit Total
Base Scenario	6.489%	6.020%	5.683%	5.792%
With Development Taxes, Mitigation Costs, and Optional Amenities	6.028%	5.592%	5.277%	5.381%
TOMX 1.5 to 2.0 with TDR	5.922%	5.494%	5.193%	5.286%
TOMX to 1.5 with no TDR	6.166%	5.743%	5.614%	5.552%
TMX with BLT	5.983%	5.550%	5.241%	5.341%

On the basis of this pro forma analysis, some preliminary conclusions can be drawn regarding the layers of regulatory burden.

- The development taxes, mitigation costs, and optional method amenities reduce returns from the best-case (Base Scenario, all market rate units) by 0.461% (6.489% less 6.028%).
- The MPDU requirement further reduces yield to 5.592%, a decline of 0.436%.
- The Workforce Housing requirement reduces yields to 5.277%, a decline of 0.325%.
- The TMX with BLT further reduces yields from 5.277% to 5.241%, a decline of 0.036%.

Staff suggests that further analysis will help the Board to better understand the burden of existing regulations. As such, this analysis should mark the beginning—rather than the end—of this inquiry. Additional questions that should be addressed include the relative burdens on commercial and residential uses in transit areas, an assessment of “how much is too much,” and an attempt to identify specific policy solutions to close redevelopment feasibility gaps in transit areas.

Resolution No:  
Introduced: June 24, 2008  
Adopted: June 24, 2008

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS A DISTRICT COUNCIL FOR THAT PORTION  
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT  
WITHIN MONTGOMERY COUNTY, MARYLAND

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By: District Council at the Request of the Planning Board

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Subject: Notice of Public Hearing on Zoning Text Amendment 08-14

Background

1. Section 59-H-9.3 of the Montgomery County Ordinance requires that, within 30 days of introduction of any text amendment, the Council act by resolution to set a date and time for public hearing on the proposed amendment.
2. Zoning Text Amendment No. 08-14, introduced on June 24, 2008, would amend the Zoning Ordinance to establish the Transit Mixed-Use (TMX) Zone.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland approves the following resolution:

Legal notice will be given of the public hearing to be held on July 29, 2008 at 1:30 p.m., in the Council Hearing Room, Stella Werner Council Office Building, Rockville, Maryland, for the purpose of giving the public an opportunity to comment on the proposed amendment.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

30